

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of : **Mail Stop: Petitions Branch**
Andre VAN DYK : Docket No. 2004_1031A
Serial No. 10/500,704 : **Confirmation No. 7198**
Filed July 2, 2004

ELEMENT FOR INITIATING
PROPELLANT

THE COMMISSIONER IS AUTHORIZED
TO CHARGE ANY DEFICIENCY IN THE
FEE FOR THIS PAPER TO DEPOSIT
ACCOUNT NO. 23-0975.

PETITION UNDER 37 C.F.R. § 1.47(b)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Petition is hereby made under 37 C.F.R. § 1.47(b) to be permitted to proceed with prosecution of the above-identified application absent the signature of the sole inventor, Andre Van Dyk. The grounds for the petition are set forth below and supported by the accompanying documentary evidence.

The U.S. firm of Wenderoth, Lind & Ponack, L.L.P. (Wenderoth) represents the applicant of the above-identified application and receives its instructions from McCallum Rademeyer & Freimond (McCallum), the South African attorneys for the assignee of the present application, NXCO International Limited.

As is evidenced from a letter from McCallum to Wenderoth dated December 6, 2004 (**Exhibit A**), unsuccessful attempts have been made to obtain the signature of Mr. Van Dyk on the Declaration. Attached correspondence from McCallum to Mr. Van Dyk dated July 26, 2004; September 2, 2004; September 20, 2004; October 14, 2004; December 14, 2004; and December 17, 2004 (**Exhibit B**) provides evidence that numerous attempts were made to have Mr. Van Dyk sign the Declaration, but that no response has been received from Mr. Van Dyk. In addition, the

Petition Under 37 C.F.R. § 1.47(b)
U.S. Application No. 10/500,704

correspondence in **Exhibit B** provides evidence that a full copy of the application was sent to Mr. Van Dyk along with the Declaration form for his signature.

As indicated in the letter from McCallum to Wenderoth dated December 6, 2004 (**Exhibit A**), at the time of the invention described in above-identified application, Mr. Van Dyk was in the full time employment of NXCO Mining Technologies Ltd, a South African company owned by NXCO International Limited, and in terms of the corporate government rules, all inventions and other intellectual property vested in NXCO International Limited. Mr. Van Dyk signed such an agreement to this effect and, more pertinently, has assigned all rights in the above-identified application directly to NXCO International Limited by an Assignment of Patent Application dated December 5, 2002 (**Exhibit C**).

Accordingly, the Assignment of Patent Application dated December 5, 2002 (**Exhibit C**) establishes NXCO's proprietary interest in the above-identified application. Further, NXCO states that the filing of the above-identified patent application is necessary to preserve the rights of the parties and to prevent irreparable damage. On the enclosed Declaration, the general manager of NXCO International Limited, Mr. Edward Walenty Tota, has signed the Declaration on behalf of NXCO International Limited. Mr. Tota is an authorized representative of the corporation.

The refusing inventor's last known address is as follows:

Mr. Andre VAN DYK
223 Eland Street
Wierda Park
Centurion
0002 Pretoria
SOUTH AFRICA

Additionally attached hereto (**Exhibit D**) is a copy of the executed Declaration and Reply to Notification of Missing Requirements filed February 25, 2005.

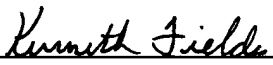
In view of the foregoing, it is believed that all of the necessary information has been provided which is necessary to grant this petition. The Special Program Examiner is invited to

Petition Under 37 C.F.R. § 1.47(b)
U.S. Application No. 10/500,704

contact the undersigned by telephone if it is felt that there are any issues remaining which must be resolved before the granting of this petition.

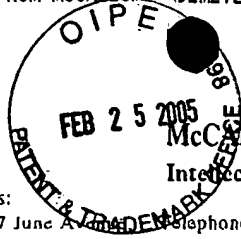
A check for the petition fee of \$200.00 under 37 C.F.R. § 1.17(h) is attached.

Respectfully submitted,


Kenneth W. Fields
Registration No. 52,430

KWF/abm
Washington, D.C. 20006-1021
Telephone (202) 721-8200
Facsimile (202) 721-8250
February 25, 2005

EXHIBIT A

**MRF****MCCALLUM RADEMEYER & FREIMOND**

Intellectual Property Law: Patents and Trade Marks

Physical Address:

Maclyn House, 7 June Avenue, Randburg
Randburg, Johannesburg

Telephone (011) 789-1046

Telefax (011) 787-4516

Docex 5 Randburg

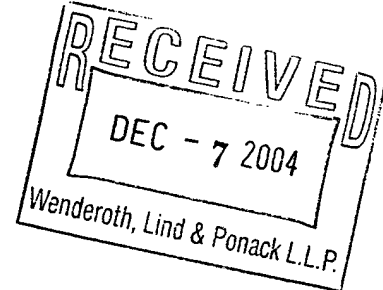
website: www.mrf.co.za

e-mail: monty@mrf.co.za

Postal Address:

Box 1130, Randburg,
2125, South Africa**URGENT
BY FACSIMILE**

6 December 2004

Wenderoth, Lind & Ponack, L.L.P.
2033 K Street
N.W. Suite 800
Washington D.C.
20006
USAAttention : Mr. M. HuppertYour Ref: 2004-1031A/MSH/00491
Our Ref: P.20325/MAJR

Dear Mr. Huppert

US National Phase Patent Application based on PCT/ZA02/00212
Entitled : ELEMENT FOR INITIATING PROPELLANT
In the name of : NXCO INTERNATIONAL LIMITED

VANDYK

I refer to earlier correspondence regarding this application.

As you know the declaration is outstanding. The application was filed in the name of the invention Andre van Dyk and at all it has been the intention for the application to be assigned to NXCO International Limited of Saffrey Square, Suite 205, Bank Lane, Nassau, Bahamas.

The application has been filed on the instructions of NXCO and NXCO has met the cost thereof.

The American application is based on an international application which in turn claimed priority from a South African provisional patent application. The international application and the South African application were also filed in the name of Andre van Dyk but under the direction of NXCO.

Andre van Dyk was in the full time employment of NXCO Mining Technologies (Pty) Ltd a South African company owned by NXCO International Limited, and in terms of the corporate government rules all inventions and other intellectual property vested in NXCO International Limited. Andre van Dyk has signed an agreement to this effect and, more pertinently, in respect of the current invention and patent application, assigned all rights directly to NXCO International Limited in 2002.

A dispute has arisen between Andre van Dyk and NXCO Mining Technologies (Pty) Ltd. This does not have to do with ownership of the invention but with the alleged misuse and unauthorized appropriation by Andre van Dyk of assets and facilities belonging to NXCO Mining Technologies (Pty) Ltd. It is probably due to this dispute that Andre van Dyk has refused to sign the declaration and the assignment.

Please note that this application is one of five similar USA patent applications and in each instance the situation is the same.

2

A number of letters have been directed to Andre van Dyk requesting him to sign the outstanding documentation but to no avail. No response at all has been received. Some of the letters were sent by registered mail. All letters have been accepted by the addressee and no letters have been returned.

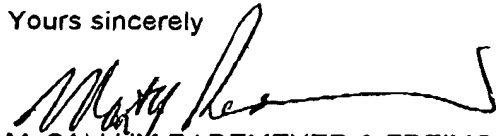
Do you think the preceding information is adequate for the preparation of a petition to the patent office to overcome the lack of the declaration? Please let me have your comments.

I attach a copy of a typical assignment document, executed by Andre van Dyk, and ask whether this would be adequate to substantiate the claim of NXCO International Limited to ownership of the American patent application.

I look forward to hearing from you.

You should, at the same time, give me an estimate of the cost of preparing and filing the petition, and of recording the assignment.

Yours sincerely



MCCALLUM RADEMEYER & FREIMOND








Per: M.A.J. RADEMEYER

/jes








EXHIBIT B

monty








From: monty [monty@mrf.co.za]
Sent: Friday, December 17, 2004 09:04
To: 'aor@wol.co.za'
Subject: FW: URGENT - US APPLICATIONS

INT1076 Andre van Dyk.doc (51 ...
 INT1072 Andre van Dyk.doc (63 ...
 INT1073 Andre van Dyk.doc (52 ...
 INT1074 Andre van Dyk.doc (94 ...
 INT1075 Andre van Dyk.doc (120...
 P20309 Jones assignment.doc (3...
 P20301 declaration and power o...

P20301 Jones assignment.doc (3...
 P20309 declaration and power o...
 P20325 Forms page 5 of 5.jpg (...
 P20293 Forms.jpg (346 KB)
 P20293 Forms - 2.jpg (243 KB)
 P20317 Forms page 1 of 5.jpg (...
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McCallum Rademeyer & Freimond
 Intellectual Property Law Specialists
 Tel: +27 11 789 1046 Fax: +27 11 787 4516
 monty@mrf.co.za

This e-mail may be confidential and/or privileged. Only the intended recipient may access or use it. If you are not the intended recipient, please delete this e-mail and notify us promptly. We use virus scanning software but exclude all liability for viruses or similar in any attachment.

Please acknowledge or reply to this e-mail promptly.

-----Original Message-----

From: monty [mailto:monty@mrf.co.za]
Sent: Tuesday, December 14, 2004 10:15
To: 'aor@mweb.co.za'
Subject: URGENT - US APPLICATIONS

Attention : Mr. Andre van Dyk

This is a final attempt to ask for your cooperation in completing the filing requirements for the American patent applications.

We again enclose:

- a) a full copy of each specification and claims;
- b) a declaration/power of attorney form for each case for signature by you; and
- c) an assignment document for each case for signature by you.

Please sign the forms (b) and (c) and fax copies thereof to us by return. The original signed forms should be posted to us.

If we do not have the forms by 17 December 2004 we will be compelled to instruct our correspondent, for each application, to file a petition at the US Patent Office in order to regularize the matter. This will cost a significant amount and, as previously stated, NXCO will thereafter proceed to recover costs from you.

Yours sincerely

Monty Rademeyer

McCallum Rademeyer & Freimond
Intellectual Property Law Specialists
Tel: +27 11 789 1046 Fax: +27 11 787 4516
monty@mrf.co.za

This e-mail may be confidential and/or privileged. Only the intended recipient may access or use it. If you are not the intended recipient, please delete this e-mail and notify us promptly. We use virus scanning software but exclude all liability for viruses or similar in any attachment.

Please acknowledge or reply to this e-mail promptly.

Outgoing mail is certified Virus Free.
Checked by AVG anti-virus system (<http://www.grisoft.com>).
Version: 6.0.809 / Virus Database: 551 - Release Date: 12/9/2004

Outgoing mail is certified Virus Free.
Checked by AVG anti-virus system (<http://www.grisoft.com>).
Version: 6.0.816 / Virus Database: 554 - Release Date: 12/14/2004

**McCALLUM RADEMEYER & FREIMOND****Intellectual Property Law: Patents and Trade Marks****Physical Address:**

Madlyn House, 7 June Avenue, Telephone (011) 789-1046 Telefax (011) 787-4516 Docex 5 Randburg
Randburg, Johannesburg website: www.mrf.co.za e-mail: monty@mrf.co.za

Postal Address:

Box 1130, Randburg,
2125, South Africa

26 July 2004

Mr. A. van Dyk
223 Elands Street
Wierda Park
Centurion

Our Ref: NXCO/MAJR

Dear Mr. van Dyk

VARIOUS FORMS FOR SIGNATURE – NXCO USA PATENT APPLICATIONS

National phase patent applications, based on the international applications identified below, have recently been filed in the USA. As you are the named inventor I enclose, for signature by you, in respect of each application a declaration form and an assignment document. Please return the original signed forms to me as soon as possible.

I will shortly send you similar forms for the US national phase application based on PCT/ZA02/00209.

Yours sincerely

McCALLUM RADEMEYER & FREIMOND

Per: M.A.J. RADEMEYER

/jes

cc: NXCO – Mr. E. Tota

USA National Phase Applications based on:

PCT/ZA02/00208

PCT/ZA02/00210

PCT/ZA02/00211

PCT/ZA02/00212

**MCCALLUM RADEMEYER & FREIMOND****Intellectual Property Law: Patents and Trade Marks****Physical Address:**Maclyn House, 7 June Avenue,
Randburg, JohannesburgTelephone (011) 789-1046 Telefax (011) 787-4516 Docex 5 Randburg
website: www.mrf.co.za e-mail: monty@mrf.co.za**Postal Address:**Box 1130, Randburg,
2125, South AfricaBY FACSIMILE

012 653 3603

CONFIRMATION BY MAIL

2 September 2004

Mr. A. van Dyk
223 Elands Street
Wierda Park
Centurion

Our Ref: P20325/MAJR

Dear Sir

US NATIONAL PHASE PATENT APPLICATION BASED ON PCT/ZA02/00212
Entitled : ELEMENT FOR INITIATING PROPELLANT
In the name of : NXCO INTERNATIONAL LIMITED

We refer to earlier correspondence regarding this patent application and again enclose a declaration and power of attorney form for use in this case, for signature by you, where indicated, and an assignment document, again, for signature by you, in terms whereof the application is assigned to NXCO International Limited.

We ask you please to sign the documents as a matter of urgency and to return the signed documents to us forthwith. If the documents are not duly signed the validity of the patent application will be placed in jeopardy.

Yours faithfully

MCCALLUM RADEMEYER & FREIMOND

Per: M.A.J. RADEMEYER

/jes

**MCCALLUM RADEMEYER & FREIMOND****Intellectual Property Law: Patents and Trade Marks****Physical Address:**Mactyn House, 7 June Avenue,
Randburg, Johannesburg

Telephone (011) 789-1046 Telefax (011) 787-4516 Docex 5 Randburg

website: www.mrf.co.zae-mail: monty@mrf.co.za**Postal Address:**Box 1130, Randburg,
2125, South Africa**BY REGISTERED MAIL**

20 September 2004

Mr. A. van Dyk
223 Elands Street
Wierda Park
Centurion

Our Ref: P20325/MAJR

Dear Sir

US NATIONAL PHASE PATENT APPLICATION BASED ON PCT/ZA02/00212
Entitled : ELEMENT FOR INITIATING PROPELLANT
In the name of : NXCO INTERNATIONAL LIMITED

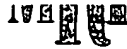
We enclose a copy of our letter of 2 September 2004 and again enclose a declaration and power of attorney form, and an assignment document, for signature by you, in order to complete all of the formalities relating to this application. Please ensure that the signed documents are returned to us forthwith. As previously stated if the documents are not duly filed at the American patent office the validity of the patent application will be placed in jeopardy.

Yours faithfully

MCCALLUM RADEMEYER & FREIMOND

Per: M.A.J. RADEMEYER

/jes

**McCALLUM RADEMEYER & FREIMOND****Intellectual Property Law: Patents and Trade Marks****Physical Address:**

Maclyn House, 7 June Avenue, Telephone (011) 789-1046 Telefax (011) 787-4516 Docex 5 Randburg
Randburg, Johannesburg website: www.mrf.co.za e-mail: monty@mrf.co.za

Postal Address:

Box 1130, Randburg,
2125, South Africa

14 October 2004

NXCO International Limited
PO Box 529
Broederstroom
0240

Attention : Mr. Ed Tota

Our Ref: P.20293/MAJR

Dear Ed

VARIOUS AMERICAN APPLICATIONS

I have had no response from Andre van Dyk to reminders to sign the required forms for the American applications.

I attach for your records a copy of a letter dated 20 September 2004 (the same letter were used for each application) sent to Andre.

In the very near future the American patent office will call for the outstanding documents. Do you want me to attempt to preempt matters by notifying each correspondent of the situation and taking opinion on the best course of action to follow? I look forward to hearing from you.

I am again sending reminders to Andre.

Yours sincerely

McCALLUM RADEMEYER & FREIMOND

Per: M.A.J. RADEMEYER

/jes

encl.

EXHIBIT C

ASSIGNMENT OF PATENT APPLICATION

THIS DEED WITNESSES:

(1) THAT:

- (a) THE ASSIGNOR(S) is/are VAN DYK, Andre of 223 Eland Street, Wierda Park, Centurion, Pretoria, 0002, South Africa
- (b) THE ASSIGNEE(S) is/are NXCO INTERNATIONAL LIMITED of Saffrey Square, Suite 205, Bank Lane, Nassau, Bahamas.
- (c) THE INVENTION is an invention entitled
ELEMENT FOR INITIATING PROPELLANT (now allocated)
- (d) THE PATENT APPLICATION is International Patent Application (No. PCT/ZA02/00212) in respect of THE INVENTION:

(2) THAT THE ASSIGNOR(S) hereby assign(s) to the ASSIGNEE(S), in respect of all countries:


- (a) THE PATENT APPLICATION,
- (b) THE INVENTION, and
- (c) the right to apply for patents in respect of THE INVENTION

the assignment taking effect on the filing date of the PATENT APPLICATION

(3) AND THAT THE ASSIGNOR(S) hereby undertake(s) to execute all documents that may be required to make this assignment effective, to effect registration of THE PATENT APPLICATION in the name of the ASSIGNEE(S), and to enable THE ASSIGNEE(S) to apply for patents anywhere based on the PATENT APPLICATION, all at the expense of THE ASSIGNEE(S).

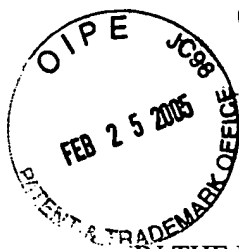
Signed by THE ASSIGNOR(S) at Centurion
this 5th day of December 2002.


(Witnessed)


(Witnessed)


ANDRE VAN DYK

EXHIBIT D



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of : **Mail Stop: Petitions Branch**
Andre VAN DYK : Atty Docket No. 2004_1031A
Serial No. 10/500,704 : **Confirmation No. 7198**
Filed July 2, 2004 :

ELEMENT FOR INITIATING PROPELLANT

PATENT OFFICE FEE TRANSMITTAL FORM

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Attached hereto is a check in the amount of \$200.00 to cover Patent Office fees relating to filing the following attached papers:

Petition under 37 C.F.R. § 1.47(b) \$200.00

A duplicate copy of this paper is being submitted for use in the Accounting Division, Office of Finance.

The Commissioner is authorized to charge any deficiency or to credit any overpayment associated with this communication to Deposit Account No. 23-0975, with the EXCEPTION of deficiencies in fees for multiple dependent claims in new applications.

Respectfully submitted,

Andre VAN DYK

By Kenneth W. Fields
Kenneth W. Fields
Registration No. 52,430
Attorney for Applicant

KWF/abm
WENDEROTH, LIND & PONACK, L.L.P.
2033 K St., N.W., Suite 800
Washington, D.C. 20006-1021
Telephone (202) 721-8200
February 25, 2005

[Check No. 66833]

2004_1031A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of :
 Andre VAN DYK : **Confirmation No. 7198**
 Serial No. 10/500,704 : **Mail Stop: PCT**
 Filed July 2, 2004 : **Attorney Docket No. 2004_1031A**
 ELEMENT FOR INITIATING PROPELLANT :

PATENT OFFICE FEE TRANSMITTAL FORM

Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

Sir:

Attached hereto is a check in the amount of \$65.00 to cover Patent Office fees relating to filing the following attached papers:

Late filing of executed Declaration \$65.00

A duplicate copy of this paper is being submitted for use in the Accounting Division, Office of Finance.

The Commissioner is authorized to charge any deficiency or to credit any overpayment associated with this communication to Deposit Account No. 23-0975, with the EXCEPTION of deficiencies in fees for multiple dependent claims in new applications.

03/03/2005 HKAYPAGH 00000155 10500704

01 FC:2617

65.00 JP

Respectfully submitted,

Andre VAN DYK

By

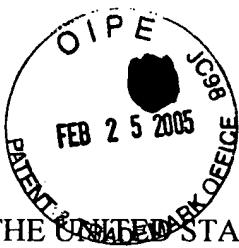
Kenneth W. Fields

Kenneth W. Fields
 Registration No. 52,430
 Attorney for Applicant

KWF/abm
 WENDEROTH, LIND & PONACK, L.L.P.
 2033 K St., N.W., Suite 800
 Washington, D.C. 20006-1021
 Telephone (202) 721-8200
 February 25, 2005

[Check No. 666835]

2004_1031A



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of : Confirmation No. 7198
Andre VAN DYK : Mail Stop: PCT
Serial No. 10/500,704 : Attorney Docket No. 2004_1031A
Filed July 2, 2004 :

ELEMENT FOR INITIATING PROPELLANT
[Corresponding to PCT/ZA02/00212
Filed December 17, 2002]

COPY

REPLY TO NOTIFICATION OF MISSING REQUIREMENTS
UNDER 35 USC 371

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the PTO Notification of Missing Requirements Under 35 USC 371 dated January 6, 2005, submitted herewith is a Declaration for the above application executed by the inventors.

Also enclosed are the PTO surcharge of \$65.00 required by 37 CFR 1.492(e), and a copy of the PTO notice.

It is respectfully submitted that the application is now complete, and early indication thereof is now requested.

Respectfully submitted,

Andre VAN DYK

By Kenneth W. Fields
Kenneth W. Fields
Registration No. 52,430
Attorney for Applicant

KWF/abm
Washington, D.C. 20006-1021
Telephone (202) 721-8200
Facsimile (202) 721-8250
February 25, 2005